

By: Simmons

H.B. No. 58

A BILL TO BE ENTITLED

AN ACT

relating to the establishment of a tax credit scholarship and educational expense assistance program.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 2. TAX CREDIT SCHOLARSHIP AND EDUCATIONAL EXPENSE

ASSISTANCE PROGRAM

SECTION 2.01. Subtitle B, Title 3, Insurance Code, is amended by adding Chapter 230 to read as follows:

CHAPTER 230. CREDIT AGAINST PREMIUM TAXES FOR CONTRIBUTIONS TO

CERTAIN EDUCATIONAL ASSISTANCE ORGANIZATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 230.001. DEFINITIONS. In this chapter:

(1) "Educational assistance organization" means an organization that:

(A) has the ability according to the organization's charter to award scholarships to or pay educational expenses for eligible students in:

(i) public elementary or secondary schools located in this state; or

(ii) nonpublic elementary or secondary schools located in this state:

(a) that meet the requirements of Section 230.052;

(b) at which a student may fulfill

1 this state's compulsory attendance requirements; and

2 (c) that are not in violation of the
3 federal Civil Rights Act of 1964 (42 U.S.C. Section 2000a et seq.);
4 and

5 (B) uses part of its annual revenue for the
6 purpose provided by Paragraph (A).

7 (2) "State premium tax liability" means any liability
8 incurred by an entity under Chapter 221, 222, or 224.

9 Sec. 230.002. RULES; PROCEDURES. (a) The comptroller
10 shall adopt rules and procedures to implement, administer, and
11 enforce this chapter.

12 (b) A rule adopted under Subsection (a) is binding on an
13 organization that applies for certification as an educational
14 assistance organization, an entity that applies for a credit, and a
15 state or local governmental entity, including a political
16 subdivision, as necessary to implement, administer, and enforce
17 this chapter.

18 SUBCHAPTER B. SCHOLARSHIP AND EDUCATIONAL EXPENSE ASSISTANCE

19 PROGRAM

20 Sec. 230.051. SELECTION OF CERTIFIED EDUCATIONAL
21 ASSISTANCE ORGANIZATIONS. (a) An organization may apply to the
22 comptroller for certification as a certified educational
23 assistance organization during an application period provided by
24 the comptroller.

25 (b) To be eligible for certification, the organization:

26 (1) must:

27 (A) be exempt from federal tax under Section

1 501(a) of the Internal Revenue Code of 1986 by being listed as an
2 exempt organization in Section 501(c)(3) of that code;

3 (B) be in good standing with the state;

4 (C) be located in the state;

5 (D) of the organization's annual revenue from
6 contributions that are designated for scholarships or educational
7 expense assistance for eligible students under this chapter,
8 allocate:

9 (i) at least 75 percent for scholarships
10 for eligible students to attend nonpublic schools;

11 (ii) at least 15 percent for assistance for
12 educational expenses, including tuition, transportation, and
13 instructional materials and other supplies, and for other related
14 educational expense assistance as described by this section; and

15 (iii) not more than 10 percent for
16 administrative expenses;

17 (E) award scholarships and assistance for
18 qualifying educational expenses to eligible students who
19 demonstrate the greatest financial and academic need;

20 (F) agree to give each donor a receipt for money
21 contributed to the organization that includes the name of the
22 organization, the name of the donor, the amount of the
23 contribution, the information required by Section 230.054(c), and
24 any other information required by the comptroller;

25 (G) demonstrate experience and technical
26 expertise in:

27 (i) accepting, processing, and tracking

1 applications for scholarships or educational expense assistance;

2 and

3 (ii) awarding scholarships to students in

4 primary or secondary schools;

5 (H) agree to be independently audited on an

6 annual basis and file the audit with the comptroller; and

7 (I) disburse within two academic years of receipt

8 contributions received from and designated by entities for

9 scholarships or educational expense assistance under this chapter;

10 and

11 (2) may not:

12 (A) award all scholarships under this chapter to

13 students who attend a particular school or pay educational expenses

14 incurred only at a particular school;

15 (B) provide to a student a scholarship in an

16 annual amount that exceeds the amount provided under Section

17 230.055(a) or (b), unless the money used to provide the portion of

18 the scholarship in excess of that amount was contributed by a person

19 other than an entity that notifies the organization under Section

20 230.054(c) that the entity may apply for a tax credit for the

21 contribution; and

22 (C) provide to a student educational expense

23 assistance in excess of the amount provided under Section

24 230.055(c) per academic year, unless the money used to provide the

25 portion of the assistance in excess of that amount was contributed

26 by a person other than an entity that notifies the organization

27 under Section 230.054(c) that the entity may apply for a tax credit

1 for the contribution, including assistance for:

2 (i) facility fees;

3 (ii) instructional materials;

4 (iii) school supplies;

5 (iv) tutoring;

6 (v) academic after-school programs;

7 (vi) school or lab fees; and

8 (vii) transportation expenses, including

9 the cost to transfer from one public school to another.

10 (c) The comptroller shall certify one organization as the
11 primary certified educational assistance organization and one
12 organization as the secondary certified educational assistance
13 organization. The comptroller shall select the organizations to
14 certify as the primary and secondary certified educational
15 assistance organizations from among the organizations that apply
16 under Subsection (a) and meet the requirements of Subsection (b).
17 The comptroller has broad discretion in selecting the primary and
18 secondary certified educational assistance organizations.

19 (d) The comptroller shall notify all organizations that
20 apply under Subsection (a) of the comptroller's selections under
21 Subsection (c).

22 (e) The comptroller shall attempt to maintain one primary
23 and one secondary certified educational assistance organization at
24 all times. The comptroller shall provide an application period
25 under Subsection (a) as soon as practicable after the comptroller
26 learns there is, or is likely to be, a vacancy for the primary or
27 secondary certified educational assistance organization.

1 (f) The comptroller's selections under Subsection (c) are
2 final and are not appealable.

3 Sec. 230.0511. PERFORMANCE OF CERTIFIED EDUCATIONAL
4 ASSISTANCE ORGANIZATION POWERS AND DUTIES. (a) Except as provided
5 by Subsection (b), the organization certified as the primary
6 certified educational assistance organization shall perform the
7 powers and duties assigned to the certified educational assistance
8 organization under this chapter.

9 (b) The organization certified as the secondary certified
10 educational assistance organization shall perform the powers and
11 duties assigned to the certified educational assistance
12 organization under this chapter if:

13 (1) the organization certified as the primary
14 certified educational assistance organization has its
15 certification revoked; or

16 (2) the comptroller otherwise determines the
17 organization certified as the primary educational assistance
18 organization is unable to perform the powers and duties assigned to
19 the certified educational assistance organization under this
20 chapter.

21 (c) A reference in this chapter or other law to the
22 certified educational assistance organization means the
23 organization performing the powers and duties of the certified
24 educational assistance organization under Subsection (a) or (b).

25 Sec. 230.0512. INFORMATION REGARDING SCHOLARSHIPS. (a)
26 The certified educational assistance organization shall make
27 information about scholarships under this chapter available to

1 parents of a student who is eligible to apply for assistance under
2 Section 230.053(a)(3)(E) through the organization's Internet
3 website.

4 (b) The information made available must include a notice
5 that:

6 (1) states that a nonpublic school is not subject to
7 laws regarding the provision of educational services in the same
8 manner as a public school, and a student with a disability attending
9 a nonpublic school may not receive the services a student with a
10 disability attending a public school is entitled to receive under
11 federal and state law; and

12 (2) provides information regarding rights to which a
13 student with a disability is entitled under federal and state law if
14 the student attends a public school, including:

15 (A) rights provided under the Individuals with
16 Disabilities Education Act (20 U.S.C. Section 1400 et seq.),
17 including:

18 (i) an individualized education program;
19 (ii) educational services provided in the
20 least restrictive environment;

21 (iii) instruction from certified teachers;
22 (iv) due process hearings to ensure proper
23 and full implementation of an individualized education program;

24 (v) transition and planning services; and
25 (vi) supplementary aids and services;

26 (B) rights provided under Subchapter A, Chapter
27 29, Education Code; and

1 (C) other rights provided under federal or state
2 law.

3 Sec. 230.0513. REPORTING NUMBER OF SCHOLARSHIP RECIPIENTS.

4 (a) Not later than October 1 of each year, the certified
5 educational assistance organization shall notify the commissioner
6 of education and the Legislative Budget Board of the likely number
7 of students who will enroll in a nonpublic school instead of a
8 public school using scholarships under this chapter, disaggregated
9 by the school district or open-enrollment charter school the
10 students would otherwise attend.

11 (b) Not later than March 1 of each year, the certified
12 educational assistance organization shall provide final
13 information to the commissioner of education and the Legislative
14 Budget Board regarding the actual number of students described by
15 Subsection (a), disaggregated in the same manner as the initial
16 information under that subsection.

17 Sec. 230.052. NONPUBLIC SCHOOL REQUIREMENTS. The certified
18 educational assistance organization may not award scholarships to
19 or pay educational expenses for eligible students enrolled in a
20 nonpublic school unless the nonpublic school executes a notarized
21 affidavit, with supporting documents, concerning the school's
22 qualification for scholarships and educational expense assistance
23 for eligible students who receive assistance from the certified
24 educational assistance organization, including evidence of:

25 (1) accreditation by the Texas Education Agency or by
26 an organization that is recognized by the Texas Private School
27 Accreditation Commission;

1 (2) annual administration of a nationally
2 norm-referenced assessment instrument or the appropriate
3 assessment instrument required under Section 39.023, Education
4 Code;

5 (3) valid certificate of occupancy; and

6 (4) policy statements regarding:

7 (A) admissions;

8 (B) curriculum;

9 (C) safety;

10 (D) food service inspection; and

11 (E) student to teacher ratios.

12 Sec. 230.053. ELIGIBILITY OF STUDENTS; INCLUSION IN
13 CALCULATION OF EQUALIZED WEALTH LEVEL. (a) A student is eligible
14 to apply to the certified educational assistance organization for a
15 scholarship or educational expense assistance under this chapter
16 if:

17 (1) the student resides in a public school district
18 located in whole or in part in a county; and

19 (2) the student:

20 (A) is eligible under Section 29.003, Education
21 Code, to participate in a school district's special education
22 program; or

23 (B) covered by Section 504, Rehabilitation Act of
24 1973 (29 U.S.C. Section 794).

25 (b) A student may continue to receive assistance under this
26 chapter until the earlier of the date the student graduates from
27 high school or the student's 22nd birthday if the student:

1 (1) meets the requirements of Subsection (a)(1); and
2 (2) previously qualified under Subsections (a)(2) and
3 (3)(E).

4 (c) The certified educational assistance organization shall
5 award scholarships and educational expense assistance to eligible
6 students who apply in accordance with this chapter.

7 (d) The certified educational assistance organization shall
8 provide to each parent of a student with a disability who applies
9 for a scholarship or educational expense assistance under this
10 chapter a written copy of the notice described by Section
11 230.0512(b). Before the organization may award a scholarship or
12 educational expense assistance to the student, the student's parent
13 must sign and return the notice to the organization.

14 Sec. 230.054. CREDIT FOR CONTRIBUTIONS. (a) An entity may
15 apply for a credit under this chapter only for money contributed to
16 the certified educational assistance organization and designated
17 for scholarships or educational expense assistance for eligible
18 students.

19 (b) An entity may not apply for a credit under this chapter
20 for a contribution made to the certified educational assistance
21 organization if:

22 (1) the entity requires that the contribution benefit
23 a particular person or school; or

24 (2) the contribution is designated to provide a
25 scholarship or educational expense assistance for an entity
26 employee or for a spouse or dependent of an entity employee.

27 (c) An entity shall notify the certified educational

1 assistance organization in writing when the entity makes a
2 contribution if the entity may apply for a tax credit under this
3 chapter for the contribution. An entity may not apply for a credit
4 for the contribution unless the entity provides the notification at
5 the time the contribution is made. The certified educational
6 assistance organization shall indicate on the receipt provided
7 under Section 230.051(b)(1)(F) that the entity made the
8 notification under this subsection.

9 Sec. 230.055. LIMIT ON AMOUNT OF SCHOLARSHIP OR EDUCATIONAL
10 EXPENSE ASSISTANCE. (a) Except as provided by Subsection (b), the
11 maximum scholarship amount the certified educational assistance
12 organization may award to a student under this chapter using money
13 contributed by an entity that notifies the organization under
14 Section 230.054(c) that the entity may apply for a tax credit for
15 the contribution may not exceed 75 percent of the state average
16 maintenance and operations expenditures per student for the
17 preceding state fiscal year.

18 (b) A student who receives a payment to an education savings
19 account under Section 29.358, Education Code, for a year is
20 eligible to receive for the same year a scholarship from the
21 certified educational assistance organization if the student is
22 eligible for that assistance. The maximum scholarship amount the
23 certified educational assistance organization may award to a
24 student to whom this subsection applies using money contributed by
25 an entity that notifies the organization under Section 230.054(c)
26 that the entity may apply for a tax credit for the contribution may
27 not exceed the sum of:

1 (1) the difference between the amount of the payment
2 under Section 29.358, Education Code, and the full tuition amount
3 for the student's nonpublic school; and

4 (2) a transportation allowance not to exceed \$500.

5 (c) The maximum educational expense assistance the
6 certified educational assistance organization may award to a
7 student under this chapter using money contributed by an entity
8 that notifies the organization under Section 230.054(c) that the
9 entity may apply for a tax credit for the contribution may not
10 exceed \$500 for the 2018 state fiscal year, increased by five
11 percent each subsequent year.

12 Sec. 230.056. REVOCATION. (a) The comptroller shall
13 revoke the certification provided under Section 230.051 if the
14 comptroller finds that the certified educational assistance
15 organization:

16 (1) is no longer eligible under Section 230.051; or

17 (2) intentionally and substantially violates this
18 chapter.

19 (b) The comptroller has broad discretion in determining
20 whether to revoke a certification under Subsection (a).

21 (c) The comptroller shall notify the certified educational
22 assistance organization in writing of the comptroller's decision to
23 revoke the organization's certification. If the comptroller
24 revokes the organization's certification, the comptroller shall
25 include in the notice of revocation the reasons for the revocation.

26 (d) If the comptroller revokes the certified educational
27 assistance organization's certification under Subsection (a), the

1 organization may request in writing a reconsideration of the
2 revocation not later than the 10th day after the date of the notice
3 under Subsection (c) or the revocation is final.

4 (e) An organization that requests a reconsideration under
5 Subsection (d) may submit to the comptroller not later than the 30th
6 day after the date the request for reconsideration is submitted
7 additional information and documents to support the organization's
8 request for reconsideration.

9 (f) The comptroller's reconsideration of a revocation under
10 this section is not a contested case under Chapter 2001, Government
11 Code. The comptroller's decision on a request for reconsideration
12 of a revocation is final and is not appealable.

13 (g) This section does not create a cause of action to
14 contest a decision of the comptroller to revoke the certified
15 educational assistance organization's certification under this
16 chapter.

17 (h) Revocation of a certification under this section does
18 not affect the validity of a tax credit relating to a contribution
19 made before the date of revocation.

20 Sec. 230.057. REPORT OF NET SAVINGS TO PUBLIC EDUCATION.

21 (a) In this section, "net savings" means any positive difference in
22 a state fiscal year between:

23 (1) the amount by which state spending on public
24 education for that year is reduced as a result of students receiving
25 scholarships and educational expense assistance from the certified
26 educational assistance organization under this chapter; and

27 (2) the amount by which state revenue derived from

1 Chapters 221, 222, and 224 is reduced as a result of tax credits
2 under this chapter.

3 (b) Not later than December 31 of each even-numbered year,
4 the comptroller shall determine the amount of net savings for the
5 previous state fiscal biennium and make available to the public a
6 report of that amount of savings.

7 SUBCHAPTER C. CREDIT

8 Sec. 230.101. CREDIT. An entity may apply for a credit
9 against the entity's state premium tax liability in the amount and
10 under the conditions and limitations provided by this chapter. The
11 comptroller shall award credits as provided by Section 230.103.

12 Sec. 230.102. AMOUNTS; LIMITATION ON TOTAL CREDITS. (a)
13 Subject to Subsections (b) and (c), the amount of an entity's credit
14 is equal to the lesser of the amount of the qualifying contributions
15 made to the certified educational assistance organization or 50
16 percent of the entity's state premium tax liability.

17 (b) The total amount of tax credits that may be awarded
18 under this chapter for each state fiscal year may not exceed \$25
19 million.

20 (c) The comptroller by rule shall prescribe procedures by
21 which the comptroller may allocate credits under this chapter. The
22 procedures must provide that credits are allocated on a first-come,
23 first-served basis, based on the date the contribution was
24 initially made.

25 (d) The comptroller may require an entity to notify the
26 comptroller of the amount the entity intends or expects to apply for
27 under this chapter before the beginning of a state fiscal year or at

1 any other time required by the comptroller.

2 Sec. 230.103. APPLICATION FOR CREDIT. (a) An entity must
3 apply for a credit under this chapter on or with the tax return for
4 the taxable year during which the qualifying contributions were
5 made and submit with the application each receipt issued under
6 Section 230.051(b)(1)(F) that includes the information required by
7 Section 230.054(c).

8 (b) The comptroller shall adopt a form for the application
9 for the credit. An entity must use this form in applying for the
10 credit.

11 (c) The comptroller may award a credit to an entity that
12 applies for the credit under Subsection (a) if the entity is
13 eligible for the credit and the credit is available under Section
14 230.102(b). The comptroller has broad discretion in determining
15 whether to grant or deny an application for a credit.

16 (d) The comptroller shall notify an entity in writing of the
17 comptroller's decision to grant or deny the application under
18 Subsection (a). If the comptroller denies an entity's application,
19 the comptroller shall include in the notice of denial the reasons
20 for the comptroller's decision.

21 (e) If the comptroller denies an entity's application under
22 Subsection (a), the entity may request in writing a reconsideration
23 of the application not later than the 10th day after the date of the
24 notice under Subsection (d). If the entity does not request a
25 reconsideration of the application on or before that date, the
26 comptroller's decision is final.

27 (f) An entity that requests a reconsideration under

1 Subsection (e) may submit to the comptroller not later than the 30th
2 day after the date the request for reconsideration is submitted
3 additional information and documents to support the entity's
4 request for reconsideration.

5 (g) The comptroller's reconsideration of an application
6 under this section is not a contested case under Chapter 2001,
7 Government Code. The comptroller's decision on a request for
8 reconsideration of an application is final and is not appealable.

9 (h) This section does not create a cause of action to
10 contest a decision of the comptroller to deny an application for a
11 credit under this chapter.

12 Sec. 230.104. ASSIGNMENT PROHIBITED; EXCEPTION. An entity
13 may not convey, assign, or transfer the credit allowed under this
14 chapter to another entity unless all of the assets of the entity are
15 conveyed, assigned, or transferred in the same transaction.

16 Sec. 230.105. NOTICE OF AVAILABILITY OF CREDIT. The
17 comptroller shall provide notice of the availability of the credit
18 under this chapter on the comptroller's Internet website, in the
19 instructions for insurance premium tax report forms, and in any
20 notice sent to an entity concerning the requirement to file an
21 insurance premium tax report.

22 SECTION 2.02. An entity may apply for a credit under Chapter
23 230, Insurance Code, as added by this article, only for an
24 expenditure made on or after the effective date of this article.

25 SECTION 2.03. Not later than February 15, 2018, the
26 comptroller of public accounts shall adopt rules as provided by
27 Section 230.002(a), Insurance Code, as added by this article.

1 SECTION 2.04. The comptroller of public accounts shall make
2 the initial determination of net savings and report regarding that
3 savings as required by Section 230.057, Insurance Code, as added by
4 this article, not later than December 31, 2020, based on the state
5 fiscal biennium ending August 31, 2019.

6 SECTION 2.05. This article applies only to a report
7 originally due on or after the effective date of this article.

8 SECTION 2.06. This article takes effect January 1, 2018.

9 ARTICLE 3. JUDICIAL REVIEW

10 SECTION 3.01. (a) The constitutionality and other validity
11 under the state or federal constitution of all or any part of
12 Subchapter J, Chapter 29, Education Code, as added by this Act, or
13 Chapter 230, Insurance Code, as added by this Act, may be determined
14 in an action for declaratory judgment in a district court in Travis
15 County under Chapter 37, Civil Practice and Remedies Code, except
16 that this section does not authorize an award of attorney's fees
17 against this state and Section 37.009, Civil Practice and Remedies
18 Code, does not apply to an action filed under this section. This
19 section does not authorize a taxpayer suit to contest the denial of
20 a tax credit by the comptroller of public accounts.

21 (b) An appeal of a declaratory judgment or order, however
22 characterized, of a district court, including an appeal of the
23 judgment of an appellate court, holding or otherwise determining
24 that all or any part of Subchapter J, Chapter 29, Education Code, as
25 added by this Act, or Chapter 230, Insurance Code, as added by this
26 Act, is constitutional or unconstitutional, or otherwise valid or
27 invalid, under the state or federal constitution is an accelerated

1 appeal.

2 (c) If the judgment or order is interlocutory, an
3 interlocutory appeal may be taken from the judgment or order and is
4 an accelerated appeal.

5 (d) A district court in Travis County may grant or deny a
6 temporary or otherwise interlocutory injunction or a permanent
7 injunction on the grounds of the constitutionality or
8 unconstitutionality, or other validity or invalidity, under the
9 state or federal constitution of all or any part of Subchapter J,
10 Chapter 29, Education Code, as added by this Act, or Chapter 230,
11 Insurance Code, as added by this Act.

12 (e) There is a direct appeal to the Texas Supreme Court from
13 an order, however characterized, of a trial court granting or
14 denying a temporary or otherwise interlocutory injunction or a
15 permanent injunction on the grounds of the constitutionality or
16 unconstitutionality, or other validity or invalidity, under the
17 state or federal constitution of all or any part of Subchapter J,
18 Chapter 29, Education Code, as added by this Act, or Chapter 230,
19 Insurance Code, as added by this Act.

20 (f) The direct appeal is an accelerated appeal.

21 (g) This section exercises the authority granted by Section
22 3-b, Article V, Texas Constitution.

23 (h) The filing of a direct appeal under this section will
24 automatically stay any temporary or otherwise interlocutory
25 injunction or permanent injunction granted in accordance with this
26 section pending final determination by the Texas Supreme Court,
27 unless the supreme court makes specific findings that the applicant

1 seeking such injunctive relief has pleaded and proved that:

2 (1) the applicant has a probable right to the relief it
3 seeks on final hearing; and

4 (2) the applicant will suffer a probable injury that
5 is imminent and irreparable, and that the applicant has no other
6 adequate legal remedy.

7 (i) An appeal under this section, including an
8 interlocutory, accelerated, or direct appeal, is governed, as
9 applicable, by the Texas Rules of Appellate Procedure, including
10 Rules 25.1(d)(6), 26.1(b), 28.1, 28.3, 32.1(g), 37.3(a)(1),
11 38.6(a) and (b), 40.1(b), and 49.4.

12 ARTICLE 4. EFFECTIVE DATE

13 SECTION 4.01. Except as otherwise provided by this Act:

14 (1) this Act takes effect immediately if it receives a
15 vote of two-thirds of all the members elected to each house, as
16 provided by Section 39, Article III, Texas Constitution; and (2) if
17 this Act does not receive the vote necessary for immediate effect,
18 this Act takes effect 91 days after the last day of the legislative
19 session.